

Subject: RE: Small Claims Patent Court Study comments
Date: Friday, September 2, 2022 at 10:48:53 AM Eastern Daylight Time
From: [REDACTED]
To: ACUS Information, Kazia Nowacki
CC: [REDACTED]
Priority: High
Attachments: ACUS comments -2 SEN.docx

Hello,

Please include my comments as presented with the insert.

My contact information is below.

Thank you very much.

Best,
S. Edward Neister

S. Edward Neister
Pathogen Path Consulting

[REDACTED]



[REDACTED]

CONFIDENTIALITY NOTE: The information contained in this transmission is confidential information, and is intended only for the use of the individual(s) or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, use, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please immediately reply to the sender that you have received this communication in error and then permanently delete or destroy this communication and any copies thereof. If you have any further questions or concerns, please immediately contact the sender by telephone [REDACTED] Thank you.

To: ACUS Information, <mailto:info@acus.gov>
Cc: Kazia Nowacki, <mailto:knowacki@acus.gov>
Subject Line: Small Claims Patent Court Comments

Comments by S. Edward Neister #2, a US Inventor of multiple patents

September 1, 2022

Dear Members of the Administrative Conference Committee,

I am an inventor, a physicist, a small business owner, and an entrepreneur. I graduated from Worcester Polytechnic Institute in 1965, started my Ph. D program at Brandeis University but left to join a high tech firm doing high power laser development. I later completed my MS degree working for two different large high tech firms. I left those firms and have started 6 companies, have about 20 patents in the US and more than 7 in foreign countries.

It is important to note that technical universities and colleges promote innovation in schooling students. Understand the basics and learn how to apply the scientific principle puts a prepared mind in the best place to recognize unique thoughts and innovative concepts. My thought has always been to not worry about a pension or a large savings account to prepare for retirement, but to work to build a new concept that would provide funds to retire at the appropriate time. That hasn't happened yet because of the PTAB experience!

I want to show you, the Committee how the thrust of the PTAB on US Inventors has detrimentally affected small business, technical innovation, and the loss of leadership in new product innovations to our United States of America. This is my second input for your consideration. I submit this because I don't believe many today realize what has been lost by the PTAB invalidating patents without due process and by NOT emphasizing the basic knowledge and process and thought that trained patent examiners working at the 'current state of knowledge' provided. How can it be justifiable that a patent can be simply invalidated many years after it was granted due to the inability to accurately separate obviousness today vs. factual interpretation of the art then. 'Obviousness should not be left to individual interpretation'. So many wrongs have been committed by the PTAB process that can only be corrected by re-validating all 'PTAB invalidated patents' first, and then establish a 'Small Entity Patent Court' to let the patent holder and infringer sort it out. Large corporations should not be permitted to 'run over' the innovator or patent holder with large available funds.

In 1969, I started a new laser company and had two patents awarded on a new laser flashlamp design by 1976. The fact that these patents were considered private property and enforced by legal statues provide the basis for building a company with 100 employees to produce over 30 models of high power lasers in 22 years. During that period, over 400 people were hired, learned manufacturing processes, and many moved onto other jobs. Many were women who had worked at a local shoe manufacturing plant that was being shut down at that time in a neighboring town. The company turned out over 30 new types of high powered lasers, successfully completed a 'Star Wars' development program for demonstrating the ability to blind Russian nuclear ballistic missiles to prevent re-entry, successfully produced a secrete laser system for the US Navy to be able to obtain high resolution photographs in deep ocean waters, and produced lamps used for boarder personnel intrusion during the 'cold war'. It was an exciting time for all, the employees knew they were valued, and they enjoyed coming to work and contributed to many

new manufacturing processes. The IRS collected many taxes, employee's earnings contributed to the local economy, and all nearby consumer businesses did well.

Now consider what has happened after the PTAB 'experiment'. The fact that PTAB oversight after 2015 was present prevented the ability to attract investors to help develop the company. The new company had to focus on developing a new lamp to kill surface and airborne bacteria and virus by line-of-sight and had to finance building infrastructure and inventory by sales only. Then three US companies selling cheap Chinese copy-cat products along with a \$1 billion Japanese firm filed a 2021 lawsuit against two of the six applicable patents with the PTAB. The PTAB decision last month required an IPR review trial with an estimated cost about \$400,000 just to defend the first patent. The second patent is scheduled for PTAB review this November. This summer, the Chinese Patent Office following the US-PTAB process, reviewed and invalidated our Chinese patent that has been in place for over 11 years. (See my first submission for more details.) The result is that the company has reduced its work force by half. It owes the legal firm over \$1.5 million. Expected orders have not materialized.

The contrast is stark, and most citizens in the US would ask WHY? and HOW COULD THIS HAPPEN? PTAB has caused havoc to inventors and has unjustly canceled their property rights as were granted in the US Constitution. Why is this permitted when so much money is being spent to protect the right to bear arms? Isn't it valid to believe that the USPTO favoring Big Tech and foreign and domestic infringers is really un-American?

I hope these comments help clarify your thoughts and guide you to a responsible recommendation. US Inventors need your utmost help with this problem now. If something is not done, I firmly believe that there will occur a lack of engineers and scientist and people willing to take a chance to reveal innovative solutions to handle our societies future growth. That could be the forecast of the US becoming a second class country.

Our current system does not allow individuals like me to fairly defend my patent rights and benefit from my intellectual property after the blood, sweat, and tears that were devoted to the accomplishment. Knowing the effort, the expense, the time away from family that is required cannot be justified by the current PTAB process. Innovative people will gravitate to other endeavors.

This is the opposite of what was intended for our US Patent System by the US Constitution and our founding fathers. Rather than a small claims court, there should be a small entity court that enables a small entity to defend its patent rights 'fairly' as I outlined above.

It needs the due process of an Article III Court but must be faster and less expensive. It also requires a bias in favor of the patent holder who demonstrated before trained and knowledgeable examiners that their innovation was valid and innovative at that time and place. 'Obviousness' was conceived to defeat granted patents because it is so hard for humans to define and distinguish it fairly, years after the innovation was conceived. How can you confirm when an infringer had a competitive innovative thought years after the original thought occurred and was revealed by a granted patent?

Best,
S. Edward Neister
Member of US Inventors